

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

**COMMENTS OF SMALL, INDEPENDENT
COMPETITIVE LOCAL EXCHANGE CARRIERS**

We the undersigned represent sixteen (16) small,¹ independent competitive local exchange carriers (“CLECs”). We are an ad hoc coalition of CLECs that share serious concerns that the actions of the Federal Communication Commission (“FCC” or “Commission”) with respect to the unbundling obligations of incumbent local exchange carriers (“ILECs”) will be catastrophic to us.

Together we employ over 600 people. We pay taxes – property, personal, sales, gross receipts, payroll, and others. We help support our local economies. Our employees purchase goods and services and eat at restaurants. If the “final” rules adopted by the Commission in this proceeding are not sensitive to the needs of our industry, most of our employees will lose their jobs, the tax base will erode and federal, state and local governments will lose our tax dollars. But, most importantly, the lives of our employees will be untenably disrupted and compromised.

¹ Neither AT&T nor MCI is a signatory to these filings.

We are a productive, competent segment of the economy that should not be regulated out of existence based on a policy that is short-sighted and inconsistent with the objectives of the federal Telecommunications Act of 1996 to bring competition to telecommunications and information services.

The federal Act specified three means to encourage competition with the ILECs: resale, leasing of unbundled network elements, and facilities-based competition. All three modes of competition are allowed under the federal Act and should be financially viable to a CLEC. Still, many of us began as resellers. We then changed our business model to leasing unbundled network elements, what is commonly referred to as UNE-P. And now, many of us are beginning to transform our business model from UNE-P to facilities-based competition. The transformation in the industry has occurred in less than eight years since the FCC implemented the local provisions of the federal Act, notwithstanding the legal and regulatory uncertainties, a telecommunication bust (that we were not responsible for), corporate malfeasance, secret and unfiled interconnection agreements, and the Bell operating companies entry in intraLATA service. Our success and survival is by any measure a remarkable display of the entrepreneurial spirit of our industry. Imagine what might have been accomplished in a more “stable” market.

But we are still a nascent industry. Requiring us to transition our businesses away from the ILEC facilities within six months, a year, or even four years is naive and “will undermine the very competition that was the objective of the [federal Act].²” Any transition must be orderly and the market should be allowed to drive the transition; not an arbitrary time period established by this Commission.

² Cf. *United States Telecom Ass’n v. FCC*, Cause No. 00-1012, (D.C. Cir.), FCC’s Brief in Opposition of Respondents to Petition for Writ of Mandamus, filed September 16, 2004 at 12 (“FCC’s Brief in Opposition”).

Rules, both adopted and contemplated, that effectively eliminate UNE-P and access to switches, DS1 UNEs, DS1 EELs, line-sharing or access to the broadband capabilities of mass market loops, enterprise switching, and high capacity loop and transit facilities -- at anything but monopoly rates -- will doom our existence. If the Commission does not adopt a more moderate approach, rates will rise and access to the ILEC facilities will be denied. For example, Qwest has recently announced it will raise special access rates 20% as a result of the Commission's actions. This example of "monopolistic" rates will effectively deny us access to the ILEC's facilities. Not only will we suffer, but so will all residential and business consumers: undoubtedly, they will experience a price increase.³ Competition will be stifled. Such action is contrary to the Commission's duty to protect public interest.

The Commission has embraced a policy that will result in a duopoly between the ILECs and cable operators when it is competition that is called for. This duopoly is inconsistent with the entrepreneurial spirit the FCC usually encourages. It will stifle innovation. As Chairman Powell recently observed, "provid[ing] tools for innovative entrepreneurs [in the key] to replac[ing] yesterday's single-purpose networks with different types of full-service digital networks to support the applications of tomorrow."⁴ The "tool" is that UNEs must remain unbundled at TELRIC rates.

We need an opportunity to continue to grow, add facilities, and find new approaches before the drastic steps contemplated by this Commission are undertaken. To quote Chairman Powell again, "This country finds its greatest strength in diversity. [...]"

³ See, Interim Order, ¶ 17.

⁴ Press Statement of Chairman Powell released September 9, 2004, In the Inquiry of the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (GN Docket No. 04-54).

America's broadband future is built on the most diverse – and therefore strongest – foundation possible.”⁵ We would argue the same is true for narrowband and all telecommunications services. Caution is called for: a major overturning of the regulatory system will impede future entrepreneurs from playing a market where the regulatory environment is highly stacked in favor of the ILECs. There will not be the innovation and investment the Commission desires.⁶

We remain cautiously optimistic that the Commission's final rules will reflect the “nuanced and comprehensive analysis of competitive impairment under conditions in particular markets,”⁷ that allow us to continue to participate in the development and growth of sustainable facilities-based competition in telecommunications services.

Respectfully Submitted:

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⁵ Supra.

⁶ Contra, Interim Order at ¶ 2.

⁷ See, *FCC's Brief in Opposition* at 1.

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